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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Human rights in the administration of justice, in particular of children and juveniles in detention,

Report of the Secretary-General submitted pursuant to Commission resolution 1998/39

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I. INTRODUCTION

1. In its resolution 1998/39, the Commission on Human Rights, deeply concerned at the severity and brutality with which children and juveniles are used as instruments in criminal activities and aware of the need for special vigilance with regard to the specific situation of children and juveniles, in particular their vulnerability to various forms of abuse, injustice and humiliation, requested the Secretary-General to submit a report to it at its fifty-sixth session on practical measures for the implementation of the international standards in the field of human rights in the administration of justice, in particular juvenile justice, including on the role of technical assistance of the United Nations system in this regard.

2. The present report is submitted in accordance with that request.

II. LEGISLATIVE BACKGROUND

A. International Covenant on Civil and Political Rights

3. The first international instrument to adopt standards relating to justice for children was the International Covenant on Civil and Political Rights (ICCPR). Specifically, the ICCPR prohibits the imposition of the death penalty on people below 18 years of age (art. 6 (5)), mandates that children accused of crimes shall be separated from adults and brought speedily before a judge (art. 10 (2) (b)), ensures that child offenders are accorded the same rights as any other accused in criminal proceedings (art. 14 (1)), and requires States parties to provide criminal procedures that take into account the age and desirability of promoting the rehabilitation of children in conflict with the law (art. 14 (4)).

B. Convention on the Rights of the Child

4. The principal articles of the Convention on the Rights of the Child that deal with juvenile justice are articles 37, 39 and 40.

5. Article 37 relates to the treatment of children in conflict with the law. It stipulates that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment, that no child shall be deprived of his or her liberty unlawfully or arbitrarily, that every child deprived of liberty shall be treated with humanity and respect and that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance.

6. Article 39 relates to the rehabilitation of children subjected to mistreatment in various forms. It requires States parties to take all appropriate measures to promote physical and psychological recovery and social integration of the child victim.

7. Article 40 relates to respect for the dignity of children before the law. It recognizes the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated with dignity and worth consistent with the child's reintegration into society. In particular, every child accused of infringing the law is to be presumed innocent until proven guilty; to be

informed promptly and directly of the charges against him or her; to have the matter determined promptly by a competent, independent and impartial authority or judicial body; not to be compelled to give testimony or to confess guilt; to have the possibility of judicial review of a decision; to have access to an interpreter; to have full respect for privacy.

C. The Beijing Rules

8. The objective of the United Nations Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) is to provide a comprehensive social policy regarding the treatment of juveniles. The Rules establish minimum standards that are formulated in such a way that they may be applicable to the different legal systems of States.

9. The Rules set out the objectives of the juvenile justice system, the basic rights of juveniles, the duties of parents and guardians, steps to ensure that periods of detention are short, measures to ensure a fair trial, principles for decision-making by courts, the principle of confidentiality, respect for professionalism in the juvenile justice system, and means of providing for assistance to and rehabilitation of juveniles.

D. The Riyadh Guidelines

10. The United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) recognize that the prevention of juvenile delinquency is an essential part of crime prevention in society (guideline 1). To this end, the Guidelines establish relevant principles and guidelines relating to general prevention of delinquency, the socialization and integration of children, guidelines for social policy, legislation and juvenile justice administration, as well as guidelines for research, policy development and coordination.

E. United Nations Rules for the Protection of Juveniles Deprived of their Liberty

11. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty establish rules relating to juveniles under arrest or detained while awaiting trial as well as rules concerning juveniles in detention. The rules relating to juveniles under arrest or detained while awaiting trial are based on the principle that juveniles are presumed innocent and should be treated as such (rule 17). Juveniles should be detained in only exceptional cases and highest priority should be given to expedite cases of juveniles in preventive detention (ibid.). Juveniles detained while awaiting trial have the right to legal counsel, the right to apply for legal aid (rule 18 (a)) and shall be separated from convicted juveniles (rule 17).

12. In relation to juveniles in detention, rules are established relating to the management of juvenile facilities, the standard of personnel working in juvenile facilities, the physical environment and accommodation of juveniles in detention, the education, training of juveniles in detention, respect for the child's religion, medical care for juveniles in detention, notification of illness, injury or death, contact with the wider community for children in detention, the limitation of physical restraint and use of force and other disciplinary procedures as well as guidelines for the return of the child to the community.

III. THE COMMITTEE ON THE RIGHTS OF THE CHILD

13. The Committee on the Rights of the Child was established in 1991 to monitor the progress made by States parties in achieving the realization of the rights in the Convention on the Rights of the Child. Since 1993, the Committee has considered the initial and periodic reports of 110 States parties to the Convention and has adopted concluding observations pursuant to the consideration of these reports, including recommendations relevant to the question of juvenile justice. In these concluding observations, the Committee has often advised States parties to seek technical assistance in an effort to develop capacities to implement effectively the rights of the child.

14. In particular, the Committee has stressed the importance of widely disseminating the provisions of the Convention relating to juvenile justice and has encouraged the development and implementation of systematic training curricula. In particular, training should explain the international standards on juvenile justice and develop new attitudes and approaches to juvenile justice in order to enhance respect for all children, regardless of their social, economic or other background. Training should be directed to police and law enforcement officers, staff in correctional facilities and detention centres, judges, social workers, counsellors of young offenders, military personnel and other administration of justice officials.

15. In particular, during its twenty-second session (20 September - 8 October 1999), the Committee adopted a recommendation on the administration of juvenile justice. The recommendation notes that in the experience of the Committee, the provisions of the Convention relating to the administration of juvenile justice are in many instances not reflected in national legislation or practice, a fact which has given the Committee serious cause for concern.

16. Technical assistance has an important role to play in bridging the gap between international standards and the national implementation of those standards.

17. In order to ensure that the recommendations of the Committee are implemented at the national level, the Committee has started monitoring the technical assistance being provided by United Nations organizations and other organizations in the field of children's rights.

IV. UNITED NATIONS CHILDREN'S FUND

18. The United Nations Children's Fund (UNICEF) considers the Convention to be the starting point for ensuring that the rights of children in conflict with the law are protected. To this end, UNICEF implements the international standards relating to juvenile justice through technical assistance in four main areas: law reform, training, assistance to institutions such as prisons and crime prevention.

19. UNICEF gives technical assistance to Governments in the area of law reform through assessing legislation that is already in force and through designing new legislation. Typically, relevant legislation of a country requesting technical assistance will be identified and then assessed according to international standards. Where legislation is incomplete, new laws will be drafted or existing laws amended upon request. Current law reform projects have been

commenced in over 30 countries. Major law reform projects relating to juvenile justice are located in Albania, Brazil, Burundi, Côte d'Ivoire, Malawi, Rwanda, Senegal, South Africa, Viet Nam and most countries of Latin America.

20. UNICEF emphasizes training as an important aspect of implementing international standards on juvenile justice. Experience has shown that while some countries have relatively sophisticated juvenile justice legislation in place, there is not a developed juvenile justice system to ensure that rules are implemented. In many countries, prison officers, prison wardens, legal professionals and judges are unaware of the existence of juvenile justice legislation either nationally or internationally. Training programmes of UNICEF involve both developing training modules as well as organizing and presenting training sessions for professionals working with children in conflict with the law. UNICEF has over 40 country offices, most of which are involved at some level with developing or presenting training programmes including aspects that relate to juvenile justice.

21. UNICEF is also involved in technical assistance at the institutional level. Institutional work is directed towards guaranteeing basic social services for children within the juvenile justice system. UNICEF considers the provision of adequate food, health services, leisure facilities and education to be a basic right and essential for the well-being of institutionalized children. UNICEF considers its involvement in rehabilitation of children and their reintegration into society as a particularly important aspect of its work.

22. UNICEF believes that continuing to implement international standards, in particular the Convention on the Rights of the Child, through its programmes, is an important way to reduce delinquency and avoid situations where children come into conflict with the law. The guarantee of basic social services for children, the provision of housing, access to health services, food and the participation of children in society are particularly useful in this regard. Most aspects of the technical assistance of UNICEF are directed to reducing juvenile delinquency in one way or another.

V. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

23. The Office of the High Commissioner for Human Rights (OHCHR) implements the international standards relating to juvenile justice mainly through its law reform and training programmes and through the inclusion of juvenile justice in the development and implementation of national plans of action on human rights.

24. OHCHR participated in a seminar on National Institutions and Children's Rights in Manila in September 1999 which included a component on the implementation of standards concerning juvenile justice. The seminar followed the annual meeting of the Asia-Pacific Forum of National Human Rights Institutions and was widely attended by representatives of national institutions in the region.

25. In the report of the High Commissioner for Human Rights to the General Assembly in 1999 (A/54/36), the High Commissioner noted that juvenile justice constitutes one of the main challenges for the implementation of the Convention on the Rights of the Child. As a result, the

High Commissioner has decided to focus attention on the issue of juvenile justice in the future, possibly through the organization of a major international conference in 2002.

26. While such a conference is only at the proposal stage, possible objectives could be: first, to raise awareness among States about the worldwide critical status of children in conflict with the law and the need to increase efforts to enforce legally binding norms in this field; and second, to increase technical assistance in the field of juvenile justice.

VI. CENTRE FOR INTERNATIONAL CRIME PREVENTION

27. The Centre has been involved in two projects that relate to the implementation of international standards on juvenile justice. First, the Centre has developed a child criminal justice manual. The objective of the manual is to help States implement international standards on juvenile justice by outlining the relevant aspects of the Convention and the Beijing Rules and the Riyadh Guidelines and by giving examples of good practice relevant to the implementation of international standards. Examples relate to the treatment of juveniles in detention, the administration of juvenile justice and the prevention of juvenile delinquency. The manual is designed to help Governments in implementing international standards as well as international organizations in developing and implementing technical assistance programmes in the area. The manual, which was finalized in 1998, has not yet been published.

28. The Centre has also developed a model law for use by international organizations implementing international standards in the area of juvenile justice. The model law is a tool for technical assistance rather than a legal instrument as such. The law is used as a benchmark and analysis tool for international organizations providing technical assistance in the area of law reform.

29. The Centre for International Crime Prevention has reduced its involvement in the provision of technical assistance in the area of juvenile justice and has not undertaken any new programmes for the 1998-1999 period because of lack of funding and a new setting of priorities for the Centre.

VII. COORDINATION PANEL ON TECHNICAL ADVICE AND ASSISTANCE IN JUVENILE JUSTICE

30. The Coordination Panel on Technical Advice and Assistance in Juvenile Justice was established pursuant to Economic and Social Council resolution 1997/30. The members of the Panel are UNICEF, OHCHR, the Centre for International Crime Prevention (CICP), the Committee on the Rights of the Child and the International Network on Juvenile Justice, a non-governmental organization. The objective of the Panel is to enhance, coordinate and strengthen technical cooperation in the area of juvenile justice. The first meeting of the Panel was held in Vienna from 25 to 26 June 1998.

31. The members of the Panel undertook to take all appropriate measures and coordinate their action to establish new technical assistance programmes and reinforce existing technical programmes in the area of juvenile justice in six countries, namely Uganda (UNICEF to take the lead), Bangladesh (existing co-project of UNICEF and CICP), Guatemala (UNICEF, CICP and

OHCHR), Lebanon (CICP, in conjunction with UNICEF), the Philippines (OHCHR, in conjunction with UNICEF) and a future programme in Viet Nam (OHCHR and UNICEF).

32. The Panel has not reconvened since its first meeting.

VIII. SPECIAL RAPPORTEUR ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

33. The Special Rapporteur considers that a focus on the criminal justice system is of particular importance in connection with the commercial sexual exploitation of children. The justice system can be a forceful ally of children on at least two levels: prevention of child abuse and exploitation, and avoiding secondary victimization of children in its response processes.

34. The Special Rapporteur notes that the first step in utilizing the justice system as a preventive tool is getting the child, or those acting on his or her behalf, to complain. However, in spite of appeals for strengthened children's rights, a child still often looks at the justice system with confusion. This is partly due to the fact that the justice system often neglects the child victim as a major claimant of protection in the legal process.

35. The Special Rapporteur, in her report to the Commission on Human Rights at its fifty-third session (E/CN.4/1997/95 and Corr. 1), noted problem areas both nationally and internationally. Nationally, there were problems in the areas of law enforcement, including the prosecution of offenders and the attitude of courts to child victims. Further, at the national level, recovery of damages was time-consuming and expensive and reintegration within the family and society was also traumatic and difficult. At the international level, crimes against children were difficult to pursue owing to substantive legal and procedural problems, differences in language, as well as the difficulties in bringing witnesses to a court in a different jurisdiction.

36. The Special Rapporteur listed recommendations to improve access to justice by children. Technical assistance in the implementation of international standards on juvenile justice had a role to play in implementing those recommendations. Specifically, international assistance was relevant to the training and sensitization of police officers appointed to deal with child victims, the preparation of a police manual on procedures for handling children, the confidentiality of records, training programmes for law enforcement authorities to deal with transnational trafficking in children, and law reform as a means of synchronizing national laws on crimes against children.

IX. OBSERVATIONS

37. Technical assistance of the United Nations system has an important role to play in coordinating and monitoring the implementation of international standards relating to the administration of justice, in particular juvenile justice. The technical assistance of the Office of the High Commissioner for Human Rights, the United Nations Children's Fund and the Centre for International Crime Prevention helps States implement international standards specifically through organizing programmes that relate to law reform, training of personnel, institutional support and, perhaps most importantly, by preventing juvenile delinquency. Such assistance has

helped effective national implementation of standards. The Coordination Panel on Technical Advice and Assistance in Juvenile Justice provides an important tool to assist the implementing agencies coordinate their assistance.

38. The implementing role of the organizations of the United Nations is complemented in turn by the monitoring activities of the Committee on the Rights of the Child and the Special Rapporteur on the sale of children, child prostitution and child pornography. In particular, the Special Rapporteur on the sale of children, child prostitution and child pornography has emphasized an area of juvenile justice which is sometimes overlooked, namely the situation of child victims accessing the justice system. The monitoring role of the Committee on the Rights of the Child is also important - which has recently been facilitated by OHCHR's technical assistance monitoring. The monitoring role of the Committee helps ensure the coordination of technical assistance programmes as well as promote the implementation of international standards.